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MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973.

No. 73-673

LEO WINTERS,

Petitioner,

vs.

LUTHER BOHANAN, JUDGE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, ET AL.,

Respondents.

REPLY BRIEF TO GOVERNMENT'S MEMORANDUM IN OPPOSITION.

GENE STIPE,
2915 Lincoln Boulevard,
Oklahoma City, Oklahoma 73105,
HARRY R. PALMER, JR.,
3205 Northwest 63rd Street,
P. O. Box 20744,
Oklahoma City, Oklahoma 73120,
Attorneys for Petitioner.

PHILIP B. KURLAND,
DONALD E. EGAN,
ALAN UNIKEL,
Two First National Plaza,
Chicago, Illinois 60670,
Of Counsel.

Gunthorp-Warren Printing Company, Chicago • 346-1717

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The petition for certiorari raises no mere technical question of when a district court loses jurisdiction over a case by reason of an order of transfer, as the Government's memorandum in opposition suggests.* The petition instead raises the substantial question of enforcement of the mandates of this Court and Congress under Rule 21 of the Federal Rules of Criminal Procedure—frequently underwritten by this Court's constitutional judgments—that a defendant must not be forced to trial in a district where it is clear to the trial judge that the prejudice against the defendant precludes the possibility of a fair trial.

The trial court made a finding in this case that establishes the predicate that compels transfer. "I am convinced that the

* The Government's cavalier attitude toward petitioner's rights in this case is underlined by the pin-prick of filing the "memorandum in opposition" well after this Court's Rule called for such a filing. U. S. Supreme Court Rules, Rule 24.

Defendant cannot get a fair and impartial trial in this District." (See Memorandum in Opposition, p. 2, n. 2.) This finding was based on the trial court's familiarity "with all of the newspaper stories" and "with all of the complications of this case." (*Ibid.*) Without any change in circumstances except further publicity adverse to the petitioner and the trial judge, resulting from the order of transfer, the trial court reversed its position. No justification was offered. There had been no further communication of record by any of the parties, either orally or in writing, between the order of transfer and the alleged "change of heart."

An important question of the meaning of Rule 21 and this Court's judgments is at stake on this petition. We respectfully submit that the Court should grant the petition for certiorari, reverse the judgment below, and remand the case with instructions to effectuate the transfer as Judge Bohanon commanded. The argument of absence of prejudice to the petitioner by reason of the failure to transfer, suggested by the Government, patently ignores the fact that petitioner is forced to trial proceedings in a district where the prejudice against him was so clear as to command judicial notice.

Respectfully submitted,

GENE STIPE,
2915 Lincoln Boulevard,
Oklahoma City, Oklahoma 73105,

HARRY R. PALMER, JR.,
3205 Northwest 63rd Street,
P. O. Box 20744,
Oklahoma City, Oklahoma 73120,
Attorneys for Petitioner.

PHILIP B. KURLAND,
DONALD E. EGAN,
ALAN UNIKEL,
Two First National Plaza,
Chicago, Illinois 60670,
Of Counsel.